



Department of Health

ANDREW M. CUOMO
Governor

HOWARD A. ZUCKER, M.D., J.D.
Commissioner

SALLY DRESLIN, M.S., R.N.
Executive Deputy Commissioner

April 7, 2017

CERTIFIED MAIL - RETURN RECEIPT REQUESTED

Marc S. Nash, Esq.
NYS Department of Health
Corning Tower Room 2438
Empire State Plaza
Albany, New York 12237

Barry Schultz, M.D.
[REDACTED]
Florida State Prison
P.O. Box 800
Raiford, Florida 32083

RE: In the Matter of Barry Schultz, M.D.

Dear Parties:

Enclosed please find the Determination and Order (No. 17- 107) of the Hearing Committee in the above referenced matter. This Determination and Order shall be deemed effective upon the receipt or seven (7) days after mailing by certified mail as per the provisions of §230, subdivision 10, paragraph (h) of the New York State Public Health Law.

Five days after receipt of this Order, you will be required to deliver to the Board of Professional Medical Conduct your license to practice medicine together with the registration certificate. Delivery shall be by either certified mail or in person to:

Office of Professional Medical Conduct
New York State Department of Health
Office of Professional Medical Conduct
Riverview Center
150 Broadway - Suite 355
Albany, New York 12204

If your license or registration certificate is lost, misplaced or its whereabouts is otherwise unknown, you shall submit an affidavit to that effect. If subsequently you locate the requested items, they must then be delivered to the Office of Professional Medical Conduct in the manner noted above.

As prescribed by the New York State Public Health Law §230, subdivision 10, paragraph (i), (McKinney Supp. 2015) and §230-c subdivisions 1 through 5, (McKinney Supp. 2015), "the determination of a committee on professional medical conduct may be reviewed by the Administrative Review Board for professional medical conduct." Either the licensee or the Department may seek a review of a committee determination.

Request for review of the Committee's determination by the Administrative Review Board stays penalties other than suspension or revocation until final determination by that Board. Summary orders are not stayed by Administrative Review Board reviews.

All notices of review must be served, by certified mail, upon the Administrative Review Board and the adverse party within fourteen (14) days of service and receipt of the enclosed Determination and Order.

The notice of review served on the Administrative Review Board should be forwarded to:

James F. Horan, Esq., Chief Administrative Law Judge
New York State Department of Health
Bureau of Adjudication
Riverview Center
150 Broadway – Suite 510
Albany, New York 12204

The parties shall have 30 days from the notice of appeal in which to file their briefs to the Administrative Review Board. Six copies of all papers must also be sent to the attention of Mr. Horan at the above address and one copy to the other party. The stipulated record in this matter shall consist of the official hearing transcript(s) and all documents in evidence.

Parties will be notified by mail of the Administrative Review Board's Determination and Order.

Sincerely,


James F. Horan
Chief Administrative Law Judge
Bureau of Adjudication

JFH: nm
Enclosure

**STATE OF NEW YORK: DEPARTMENT OF HEALTH
STATE BOARD FOR PROFESSIONAL MEDICAL CONDUCT**

In the matter of

Barry M. Schultz, M.D.
NYS license # 162310

CCNY

**Determination
and Order**

BPMC #17-107

A notice of referral proceeding and statement of charges, both dated January 25, 2017, were served on Respondent Barry M. Schultz, M.D. The statement of charges alleged professional misconduct in violation of New York State Education Law 6530. A hearing was held at offices of the New York State Department of Health, 259 Monroe Avenue, Rochester, New York, on March 16, 2017.

Pursuant to Public Health Law 230(10)(e), Charles J. Vacanti, M.D., Chair, Sanford H. Levy, M.D., and Paul J. Lambiase, duly designated members of the State Board for Professional Medical Conduct, served as the hearing committee. John Harris Terepka, Administrative Law Judge, served as the administrative officer.

The Department of Health (the Petitioner) was represented by Marc S. Nash, Esq. Barry M. Schultz, M.D. (the Respondent) did not appear, although duly served with notice of the hearing in conformity with the requirements of PHL 230(10)(d). (Exhibit 2.) Evidence was received and a transcript of the proceedings was made. After consideration of the entire record, the hearing committee issues this determination and order sustaining the charges and revoking the Respondent's license to practice medicine.

JURISDICTION

As is set forth in Public Health Law 230(1)&(7) and Education Law 6530, the legislature created the State Board for Professional Medical Conduct in the Department of Health and authorized it to conduct disciplinary proceedings in matters of professional medical conduct. In this case, the Respondent, a physician, has been charged with misconduct pursuant to Ed.L 6530(9)(d).

Pursuant to PHL 230(10)(p), a hearing on circumscribed issues, or "direct referral proceeding," is authorized when a licensee is charged solely with a violation of Ed.L 6530(9). Charges of misconduct under Ed.L 6530(9) are based upon a criminal conviction or an administrative violation, in New York State or another jurisdiction, establishing conduct that would constitute a crime or professional misconduct if committed in New York. The scope of the hearing is limited to whether there is a relevant conviction or administrative determination and if so, to a determination of the nature and severity of the penalty to be imposed. PHL 230(10)(p). Hearing procedures are set forth in Department of Health regulations at 10 NYCRR Part 51.

EVIDENCE

Witnesses for the Petitioner:	None
Petitioner exhibits:	1-4

Witnesses for the Respondent:	None
Respondent exhibits:	None

A transcript of the hearing was made. (Transcript, pages 1-16.)

FINDINGS OF FACT

An opportunity to be heard having been afforded the parties and evidence having been considered, it is hereby found:

1. Respondent Barry M. Schultz, M.D., was authorized to practice medicine in New York State on June 3, 1985 under license number 162310. (Exhibit 3.)
2. On November 22, 2016, the Florida Board of Medicine issued a final order which accepted the Respondent's voluntary relinquishment of his license to practice medicine in Florida. These actions were based upon charges that Respondent indiscriminately prescribed and dispensed excessive amounts of controlled substances, and his Florida conviction of multiple first degree felonies of trafficking in oxycodone. (Exhibit 4.)

HEARING COMMITTEE DETERMINATION

The Respondent relinquished his Florida medical license in the face of charges that between December 2009 and December 2010, he prescribed oxycodone, a controlled substance, to patients without medical justification. He was convicted in November 2015 of multiple felonies under Florida law for trafficking in oxycodone, for which he was sentenced to prison. The Florida Board's order specifically provided that the Respondent's relinquishment of his license constituted discipline upon his license. The hearing committee agreed that the Florida Board's charges that he prescribed oxycodone without medical justification would establish misconduct in New York pursuant to Ed.L 6530(3), practicing the profession with negligence on more than one occasion. The committee accordingly sustained the factual allegations in the statement of charges.

The hearing committee unanimously determined that, as alleged in the statement of charges, the Respondent violated Ed.L 6530(9)(d) which defines professional misconduct, in pertinent part, as:

9. (d) Having his or her license to practice medicine revoked, suspended or having other disciplinary action taken, or ... having voluntarily or otherwise surrendered his or her license after a disciplinary action was instituted by a duly authorized professional disciplinary agency of

another state, where the conduct resulting in the revocation, suspension or other disciplinary action... would, if committed in New York state, constitute professional misconduct under the laws of New York state.

The Petitioner recommended revocation of the Respondent's license. (Transcript, pages 13-14.) Although duly served with notice of the hearing by personal service (Exhibit 2), the Respondent failed to appear or respond to the charges, and failed to offer any evidence or argument to persuade the committee to a different conclusion. (Transcript, page 9.) The hearing committee agreed that revocation of his medical license is an appropriate penalty. The hearing committee's vote sustaining the charge of professional misconduct and revoking the Respondent's license was unanimous.

ORDER

IT IS HEREBY ORDERED THAT:

1. The Respondent's license to practice medicine in New York State is revoked.

This order shall be effective upon service on the Respondent by personal service or by registered or certified mail as required under PHL 230(10)(h).

Dated: Albany, New York 4 April 2017

By:

Charles J. Vacanti, M.D., Chair

Sanford H. Levy, M.D.

Paul J. Lambiase

To: Marc S. Nash, Esq.
Bureau of Professional Medical Conduct
Coming Tower, Empire State Plaza
Albany, New York 12237-0032

Barry Schultz, M.D.

Florida State Prison
P.O. Box 800
Raiford, Florida 32083

NEW YORK STATE DEPARTMENT OF HEALTH
STATE BOARD FOR PROFESSIONAL MEDICAL CONDUCT

IN THE MATTER

OF

BARRY M. SCHULTZ, M.D.

STATEMENT

OF

CHARGES

BARRY M. SCHULTZ, M.D., the Respondent, was authorized to practice medicine in New York State on or about June 3, 1985, by the issuance of license number 162310 by the New York State Education Department.

FACTUAL ALLEGATIONS

A. On or about November 22, 2016, the Florida Board of Medicine (hereinafter "Florida Board") issued a Final Order which accepted Respondent's voluntary relinquishment of his license to practice medicine in Florida, and that this acceptance constituted discipline of his license. The Florida Board's followed Respondent's voluntary relinquishment of his Florida medical license on August 28, 2016, in which Respondent understood that his action was construed as disciplinary action pursuant to Florida Statute Section 456.07(1)(f) and an Administrative Complaint filed on February 26, 2016, which alleged Respondent indiscriminately prescribed and dispensed excessive amounts of controlled substances to multiple patients from 2007 through 2015.

B. The Conduct resulting in the Florida Board's disciplinary action against Respondent would constitute misconduct under the laws of New York State pursuant to the following Sections of New York State:

1. New York Education Law §6530(3) (practicing the profession with negligence on more than one occasion).

SPECIFICATION OF CHARGES
HAVING HAD DISCIPLINARY ACTION TAKEN

Respondent violated New York State Education Law § 8530(9)(d) by having disciplinary action taken, where the conduct resulting in the disciplinary action involving the license would, if committed in New York State, constitute professional misconduct under the laws of New York State Law, in that Petitioner charges:

1. The facts in Paragraph A and B and B.1.

DATE: January 25, 2017
Albany, New York


MICHAEL A. HISER
Deputy Counsel
Bureau of Professional Medical Conduct